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Leon M. Kestenbaum
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June 24, 1996

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Federal Communications Commission
Office of Secretary

William F. Caton
Secretary
Federal Communications
Commission
1919 M St., N.W., Room 222
Washington, D.C. 20554

Re: Ex parte Presentation in CC Docket No. 96-61,
Part II Policy and Rules Concerning the
Interstate, Interexchange Marketplace;
Implementation of Section 254(g) of the
Communications Act of 1934, as amended

Dear Mr. Caton:

This responds to an earlier ex parte presentation submitted by Ad Hoc in the above-captioned docket on June 19, 1996. Ad Hoc's ex parte was "filed to refute allegations" made by Sprint in its reply comments. In particular, Ad Hoc states that Sprint was in error in challenging as "incorrect" and "speculative" Ad Hoc's claim that there are "inconsistencies between Sprint's tariffs and contracts."

Sprint's difference with Ad Hoc here is quite limited. There is no dispute that Ad Hoc's initial comments provided no evidence of such inconsistencies between Sprint's tariffs and contracts. Ad Hoc explains that "we failed to support our claim by supplying the Commission with specific examples," because of "the confidentiality requirements that typically govern negotiated service agreements...." Ad Hoc then appears to invite Sprint to remedy any such omission by submitting to the Commission the agreements which Ad Hoc has tendered Sprint and which (according to Ad Hoc) "conclusively prove [Ad Hoc's] point

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and demonstrate that [its] comments were neither speculative nor incorrect."¹

It is unclear whether Ad Hoc is suggesting that Sprint release to the Commission the contracts which Ad Hoc has sent Sprint. Since the contracts are confidential, Sprint is plainly not free to choose to release this information to the Commission without the permission of the other party to the contract. But, even if Sprint were "free to take the steps necessary to share the relevant materials with the Commission so the Commission may make its own judgment on the matter," it still would be incongruous for Sprint to proceed upon such a course. Rather, since it is Ad Hoc which urges that there are inconsistencies between Sprint's general tariffs and the provisions of individually negotiated contracts, the burden is on Ad Hoc to demonstrate this by providing necessary evidentiary support, including, to the extent necessary, any specific examples of the inconsistencies claimed. It is not up to Sprint to make Ad Hoc's case for it. And, without the submission of the actual contracts to the Commission, the characterizations of those contracts by either Sprint or Ad Hoc -- assuming they are permitted at all -- are not particularly helpful from an evidentiary standpoint.

It is perhaps unfortunate that Sprint referred to Ad Hoc's claim of "inconsistencies" as "incorrect" or "speculative." These references were never meant to impugn the integrity of Ad Hoc or its counsel. Nevertheless, without specific evidence, Sprint was genuinely unaware of what inconsistencies Ad Hoc was referring to.

Sprint's primary concern, and the argument which it sought to counter (at least as regards Sprint's own operations), is Ad Hoc's assertion that

[a]ll of the major interexchange carriers have devised vehicles for their customer-specific service arrangements that rely upon the [tariffing] regime to the disadvantage of their customers.

¹ The three contracts sent to Sprint each allegedly contain an "inconsistency" between a Sprint tariff and contract.

Ad Hoc Comments at 5). Sprint has never had recourse to the filed rate doctrine, nor has it otherwise "devised vehicles" to disadvantage its customers.

And, this is conceded by Ad Hoc in its ex parte. Ad Hoc states:

We are not accusing Sprint of deliberately filing tariff provisions that are inconsistent with the contracts it has negotiated. We recognize that inconsistencies can arise through inadvertence, rather than a deliberate attempt to violate §203 of the Communications Act. Indeed, our experience has been that Sprint will (eventually) revise its tariffs to reflect the negotiated agreement if an inconsistency is brought to its attention. In fact, Sprint's tariff specifically invites customers to identify errors, and promises to make revisions as needed.

Sprint does not take issue with Ad Hoc that some inconsistencies may inadvertently exist between Sprint's tariffs and contracts despite Sprint's best efforts to avoid and to correct such inconsistencies and to include the material terms and conditions of the contracts in the tariffs. Sprint, of course, does not view any occasional inconsistency as posing a serious threat to its customers and the rights of these customers to the benefits of their contracts with Sprint.

Sincerely,

